

REMARKS

This application has been amended in a manner that is believed to place it in condition for allowance at the time of the next Official Action.

Claims 1-14 are pending in the present application. Claims 1-9 have been amended to address several informalities found within the claims. New claims 10-14 have been added. Support for new claims 10-14 may be found in original claims 8 and 9.

At this time applicants note with appreciation the indication that claims 4, 5, 8, and 9 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the recitations of the base claim and any intervening claims. Accordingly, claim 4 has been rewritten in independent form.

In the outstanding Official Action, claims 1, 2, 6 and 7 were rejected as allegedly being anticipated by, or rendered obvious by BOMBARDELLI et al. Claims 1-3 were rejected as being anticipated or rendered obvious by CHATTERJEE et al. However, these rejections are respectfully traversed.

The hyperforin acetate disclosed in BOMBARDELLI et al. and the hyperforin salts disclosed in CHATTERJEE et al. do not disclose or suggest the definitions of  $R_1$  recited in the claimed invention.

While the Patent Office states that the compounds disclosed by these publications may have a specific stereochemistry, or a racemic mixture of isomers that may encompass the claimed invention, applicants note that this is not the standard for imposing an anticipation or obviousness rejection. Indeed, the Patent Office fails to provide any evidence to support this position.

The Examiner is respectfully reminded that any "extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is non-sufficient". In *re Robertson*, 169 F.3d 743, 745, 49 USPQ2d, 1949, 1950-51 (Fed. Cir. 1999). Thus, in view of the above, applicants believe that the cited publications fail to disclose or suggest the claimed invention.

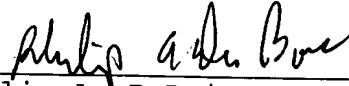
As a result, applicants respectfully submit that the present application is in condition for allowance at the time of the next Official Action, with claims 1-14, as presented. Allowance and passage to issue on that basis are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



---

Philip A. DuBois, Reg. No. 50,696  
745 South 23<sup>rd</sup> Street  
Arlington, VA 22202  
Telephone (703) 521-2297  
Telefax (703) 685-0573  
(703) 979-4709

PD/mjr